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THE ULTIMATE GUIDE TO COMBATING DISREPAIR **WHITE PAPER**

Disrepair is a significant problem that is growing in scale every year. Housing providers are having to devote an increasingly large portion of their budgets to combating claims of poor management and inappropriate conditions - rather than utilising those resources for their social mission. Condensation, damp, and mould has been an area of particular growth for disrepair claims due to its frequency in British properties. Our climate is particularly vulnerable to mould growth because of the changeable weather, combined with the construction of our homes.

With a variety of government initiatives to improve the quality of social housing, residents across the country are being given access to far greater tools for redress. The introduction of the Fitness for Human Habitation Act in England, for example, has seen the issue of disrepair grow both in financial implication but also societal. Where traditionally disrepair claims were a last resort and accompanied by a relatively narrow set of guidelines about what was covered, this bill (and other similar initiatives across the wider UK) has changed the entire way disrepair is being handled.

TABLE OF CONTENTS

1. WHAT IS DISREPAIR?

What is actually classified as disrepair, how does it impact housing providers and what are the criterias that should be of particular concern.

2. THE RISE OF DISREPAIR CLAIMS

Disrepair cases have been increasing in social housing for the last couple of years but what is driving this increasingly expensive move.

3. THE IMPACT OF THE FITNESS FOR HUMAN HABITATION ACT

With the introduction of the Fitness for Human Habitation Act in 2018, what have actually been the effects that this has had on social housing disrepair case numbers.

4. REDUCING THE LIKELIHOOD OF DISREPAIR CLAIMS

Housing providers can do a number of different things to both reduce the odds of dealing with disrepair and to better counteract false claims.

5. HOW TECHNOLOGY CAN HELP

Technology could be the saviour for many housing providers who do not have the resources of man-power to do everything manually.

1. WHAT IS DISREPAIR?

Although the exact definition of disrepair will vary from country to country (more on that below) - some of the most specific definitions of Disrepair can be found in the [Fitness for Human Habitation Act](#). Those definitions were gathered from 'The Housing Health and Safety Rating System (England) Regulations' which was written in 2005. Over the last few years, the number of residents that could be entitled to compensation if their homes are unfit to live in has increased significantly. Combined with an increasing resident awareness of the potential financial benefits of a disrepair claim, the number of cases has been on the rise.

The legal definition of disrepair is damage that needs to be put right and it might be the resident or landlord who is responsible. The UK Government have developed a [best practice guide on legal obligations for housing disrepair claims](#) for the management and delivery of repairs, although these laws have a lot of ambiguity in the definition - which, depending on the situation, can either benefit the resident or the landlord (although when cases go to court - residents are often in the advantaged position). It also leaves the door open for claims management companies to exploit any loopholes, potentially costing social housing providers tens of thousands of pounds.

Typically, a tenancy agreement leaves the landlords responsible for maintaining:

- the structure and exterior of a home - for example, the walls, roof, foundations, drains, guttering and external pipes, windows, and external doors.
- basins, sinks, baths, toilets, and their pipework.
- water, and gas pipes, electrical wiring, water tanks, boilers, radiators, gas fires, fitted electric fires or fitted heaters.

In addition, the landlord is not allowed to pass on the cost of any of these repair works which they are legally responsible for to a resident.

Disrepair in England

In England, disrepair is governed by the Fitness for Human Habitation Act. Through that act, [residents can claim compensation on a broad range of grounds:](#)

- Damage to belongings – residents can claim for items that were damaged or destroyed because of poor conditions.
- Financial loss – a resident can claim if they have spent additional money due to the issue in question, e.g. higher energy bills due to a broken boiler.
- Inconvenience and disruption – residents can claim if issues in their household have caused disruption to their daily lives or if the issue is preventing them from having full use of their home.
- Damage to health – residents can claim for loss of earnings if they were unable to work as a result of the poor conditions of their home or for the additional expenditure derived from the illness such as prescription costs or travel to hospital.

It is estimated that 0.2% of social housing residences in England claim compensation for mould-related issues. Each disrepair claim can cost landlords over £10,000 – for a landlord who owns 10,000 properties, this could represent a significant annual cost. Furthermore, there are currently no specified limits on the level of compensation a resident can receive. The compensation is decided at the discretion of the judge having considered the evidence presented during the case.

Disrepair in Scotland

Disrepair in Scotland is similar but governed by a different act. Where England has the more modern Fitness for Human Habitation Act, Scotland has the [Housing \(Scotland\) Act of 2006](#). This act establishes the basic requirements of repair for all private rented accommodation - including both the Private Rental Sector (PRS) and the Social Housing Sector (SHS). These requirements must be met at the commencement of the tenancy as well as for the duration of it. The requirements for this legislation are:

- A properties structure and exterior must be and remain in a reasonable state of repair and in working order (this includes drains, gutters and external pipework).
- All of the properties utility supplies (water, gas, and electricity) are and remain in a reasonable working state.
- The property is adequately protected from fires and has appropriate fire warning systems installed.
- The property has an appropriate carbon monoxide detection system fitted.
- The fixtures and fittings (including appliances) that are provided by the landlord are in working and reasonable condition.
- Any furnishings that are provided by the landlord in the property are able to be used safely for their designed purpose
- The property is adequately wind- and watertight in order to be fit for human habitation.

Disrepair in Northern Ireland

Disrepair cases in Northern Ireland are again held to a different standard and are additionally governed by the [Certificate of Fitness](#) system. This system has properties inspected by the local council to determine their suitability to be inhabited and must be done so within 28 days of the start of the tenancy. The requirements for Northern Ireland are:

- The property is and remains structurally stable.
- The property does not have any damp serious enough that it might damage the health of the occupier.
- The property has appropriate and adequate heating, lighting as well as ventilation.
- The property has an adequate and safe water supply.
- The property has suitable facilities to cook food, a suitably located toilet and a suitably located bath or shower and hand basin. All of these should have adequate hot and/or cold water.

2. THE RISE OF DISREPAIR CLAIMS

Over the past couple of years, there has been an unprecedented surge in the number of housing disrepair claims, also known as 'claim farming'. The 2018 Ministry of Justice annual report showed over a 100% increase in reported revenue from housing disrepair claims over the previous year. The Ministry of Justice also confirmed that this coincided with a surge in disrepair cases against local authorities and social housing providers.

Solicitors and claims management companies have managed to relieve the financial pressures caused by fixed cost personal injury reforms by exploiting housing disrepair cases. Cavity wall insulation claims have been [described by some in the claims industry to be the new PPI](#).

Social landlords are actually being singled out by these companies as potentially vulnerable targets. They are viewed as an attractive solvent defendant for claims management companies, especially for those who are looking to exploit the system in order to drive profits. Social housing residents are viewed as an easy vehicle for these claims.

Marketing methods such as letter dropping, cold calling, the use of social media, and 'no win, no fee' agreements [are drawing in a significant number of tenants to these lawyers](#). The scale of this issue is only likely to grow as disrepair cases are settled more and more frequently.

3. THE IMPACT OF THE FITNESS FOR HUMAN HABITATION ACT

The impact that the Fitness for Human Habitation Act has had on the number and frequency of disrepair claims cannot be undersold. It provides an extremely broad vehicle for solicitors to utilise against social housing providers. It's clear how easy it is to fit a property into this definition of disrepair simply by looking at the legal requirements. The criteria below are from [section 10 of the Landlord and Tenant Act 1985](#):

1. The building has been neglected and is in a bad condition.
2. The building is unstable.
3. There's a serious problem with damp.
4. It has an unsafe layout.
5. There's not enough natural light.
6. There's not enough ventilation.
7. There is a problem with the supply of hot or cold water.
8. There are problems with the drainage or the lavatories.
9. It's difficult to prepare and cook food or wash up.
10. Or any of the 29 hazards set out in the [Housing Health and Safety \(England\) Regulations from 2005](#).

[Louise Shawcross, a partner at Aticus Law](#), says "Local authorities and social housing providers are facing a perfect storm of an increasing number of housing claims and a declining amount of funds and resources to deal with them effectively."

4. REDUCING THE LIKELIHOOD OF DISREPAIR CLAIMS

Housing and regeneration law firm, Crofton Solicitors - [who experienced an almost 200% increase in disrepair cases between 2016 and 2017](#) - found that most claims only actually succeeded in court because of a lack of evidence from the housing provider. Understandably this makes disrepair cases very hard to defend in court. While 'claim farming' is going to continue, at least until restrictions are placed on housing disrepair claims similar to those placed on PPI claims, there is a range of measures social housing providers can take to mitigate the risk of disrepair claims.

1. Through property entry

Poor record-keeping of attempted property entry is the most common failure for landlords. Common statements such as 'the resident wasn't in' or 'the resident didn't let us in' and 'we carried out the repair' are unlikely to stand in court. Having clear, standardised data on entrances, work carried out and inaccessibility reasons give solicitors something to refute the claims with. This at least allows them to demonstrate to the court that the issue with the property would have been fixed had you been given appropriate access.

[Government guidelines](#) suggest that a landlord give at least 24 hours written notice to the tenant of a visit and be within reasonable hours (i.e. not late at night or too early in the morning). If your organisation isn't in the habit of ensuring you confirm with residents what time they want to have the visit, not only are your rates of inaccessibility going to go up, you are far more likely to get a claim of disrepair because crucial work wasn't carried out.

2. Don't over-commit

The [Landlord and Tenant Act](#) obliges landlords to keep their homes "in repair", but tenancy agreements often bind housing associations beyond this statutory remit. For example, keeping a home in "good repair" can be very subjective and binds landlords to standards that might not be tenable, and clarity of defence is immediately lost. This is a tricky one for social housing providers as their social mission encourages them to push for the best possible conditions for their residents. Unfortunately, this isn't often reflected in the black-and-white world of the law. Ambiguity in tenancy agreements will very often benefit the resident when it comes to cases of disrepair so being clear and attainable is better than short and vague.

A prime example of this would be the ["good repair" clause above](#). The answer to the question "what is good repair" would be down to a judge in a courtroom, subsequently leaving parties at risk. A successful solicitor engaging in a disrepair case could likely make any issue with the property in breach of said clause. Whilst changing existing tenancy agreements isn't a quick fix, since it involves tenant consultation, it is the only definitive way of resolving this issue.

3. Fit-for-purpose policies

Many social landlords have inadequate policies and procedures for avoiding successful disrepair claims, access procedures being a prime example. [Landlord liability doesn't stop because your tenant wasn't there to let you in](#), but many social housing providers leave the onus on the resident to rearrange a maintenance visit following one failed access attempt. They often wrongly assume that leaving a calling card will prompt a resident to rearrange. This is insufficient, as it does not relieve the landlord of their legal duty to repair. Refusing access is a tenancy breach and should be legally enforced.

With the cost associated with disrepair, policies for ensuring adequate ventilation, insulation, and heating system installations should be paramount. Making sure that your organisation has a policy in place that can be pointed to - and removes the ambiguity for individual housing provider operatives - will ensure that minimum standards are increased and the likelihood of a genuine case of disrepair goes down significantly.

4. Training and awareness

It's crucial to provide cross-departmental training on the issues surrounding disrepair, and preventative measures such as thorough record-keeping, logging customer contact and following policies and procedures accurately. This boils down to the calibre of housing management and the level of coordination between repairs, customer service, and tenancy management teams.

It also helps with understanding more about any given property's performance. Only by patching up these operational weaknesses will landlords be better able to successfully defend unsubstantiated claims, and only compensate tenants who have genuinely been aggrieved.

5. Technology

The final way that housing providers can reduce the likelihood of disrepair is through the use of technology. Disrepair legislation is being written (like the Fitness for Human Habitation Act) in the new environment of always-on, always-connected devices. This legislation exists in a world in which housing heating can be remotely accessed and adjusted, remote alerts can reach a homeowner from across the world, and big data has become integral to our day-to-day lives.

Housing providers who fail to utilise technology to address their issues with disrepair are leaving out one of the most valuable tools, and one with which the Fitness for Human Habitation Act was written in mind.

5. HOW TECHNOLOGY CAN HELP

There are a number of different ways that technology can be used to help social housing providers avoid disrepair claims. With the advent of new and extremely efficient IoT devices, technology now presents a very real solution to problems that have plagued social housing providers from the very beginning. Whether that is by understanding how properties are performing, providing better and more convenient services to residents or simply through providing an immediate and reliable communication channel. In order to truly counteract the rise of disrepair, however, there are three key areas that technology can help to improve.

Getting access to a property

Technology has a valuable role to play in boosting property access rates. With a smart thermostat or another piece of IoT sensor technology, housing providers can begin to automatically take advantage of the occupancy patterns of a property. The heating, for example, can give the scheduling system the information it needs to more effectively book an appointment. Residents receive an appointment that doesn't conflict with any of their normal day-to-day activities and housing providers receive a significant drop in missed appointments. With Switchee, for example, we've seen upwards of 90% access rates when providing appointments enhanced by occupancy data.

When combining this increased relevancy for appointments with a digital screen in a property, access rates increase even further. With the ability to automatically remind residents of appointments at scale (and without the traditional cost of phone calls or letters), technology can further increase access to properties. Resident access rates are primarily dictated by the convenience of the appointment and their frequency of the reminders - so ensuring that both of these aspects are handled by digital technology that works 24/7 and does not forget gives housing providers the best of both worlds.

This completely eliminates the concern surrounding disrepair through lack of access - as those who genuinely fell through the cracks are caught by the digital net and the message logs directly prove the number of times a housing provider attempted to access a property.

Preemptive maintenance

Technology is also likely the most cost-effective way to achieve true wide-scale preemptive maintenance. Modern IoT and other smart technologies, combined with data platforms that can quickly and efficiently comb through that data open up a world in which maintenance **can be done long before the resident feels the need to ring their landlord**. This technology can provide landlords with the performance of each property - and more importantly, compare them to each other. This allows housing providers to spot those properties that are underperforming, overperforming, and everything in between.

Combine this with remote testing tools - like boiler testing - and housing providers are able to understand which properties need attention, for what reason and how badly this problem is affecting the residents. Without the technology in place to do this at scale, housing providers have relied on in-person yearly visits to simply assess the issue. This leaves a huge gap for those looking to claim for disrepair - as issues can easily go undetected.

Utilising this type of data can help eliminate the 'hidden' disrepair cases - where problems slowly build inside the fabric of the building only to surface in one large wave. Housing providers who are paying careful attention to their stock can eliminate the problems as they arise and ensure that residents are always protected from bad conditions.

Data-based evidence

The final 'silver bullet' is the data that technology can provide. Disrepair cases that go to a 'he-said-she-said' battle rarely work out in favour of the housing provider. In order to combat malicious cases of disrepair - providers need to have an irrefutable source of data. Internal property statistics can provide this - as they demonstrate not only the effect of remedial measures a housing provider might have attempted - but also demonstrate the true cause of issues.

For example, if a property develops a mould problem, being able to demonstrate that the issue was not poor ventilation but instead resident behaviour could save housing providers tens of thousands of pounds. This data ensures that housing providers are educated on the issue, but have legally admissible evidence of their actions.



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GET IN TOUCH

☎ + 44 (0)800 133 7957

✉ info@switchee.co

🐦 @SwitcheeLtd

🌐 @switchee-limited

switchee.com